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HONOLULU, TERRITORY OF HAWAII, TUESDAY, OCTOBER 23 1900

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JURISDICTION IS DECLINED

Discretion of the Court
Only in Extreme
Cases.

JUDGE ESTEE REMANDS
WILLIAM H. MARSHALL

Republic of Hawaii's Laws Governed
Until June 14, 1900—Offense
Was Misdemeanor and Did
Not Require Jury Trial.

Judge Estee this morning remanded Wm. H. Marshall to the custody of the High Sheriff of Hawaii. In an exhaustive opinion he came to this conclusion: "It appearing that no Federal question is presented for the consideration of this Court, it is without jurisdiction to entertain the petition for the writ of habeas corpus. Let the petitioner be remanded."

J. T. De Bolt, attorney for petitioner; George D. Gear, amicus curiae (for petitioner); E. P. Dole, Attorney General for the Territory of Hawaii; John C. Baird, U. S. District Attorney for the Territory of Hawaii; A. S. Hartwell, W. O. Smith and Abraham Lewis Jr., amici curiae (for respondent).

It was admitted by counsel on both sides that libel in the first degree was a misdemeanor, under the penal statutes of the Territory of Hawaii, and that petitioner was not charged or convicted of an infamous crime.

After stating the grounds of the petition Judge Estee asks: "Can this Court except in very rare and extreme cases review on habeas corpus the verdict and judgment of the highest Territorial Court of Hawaii, in a criminal case wherein a constitutional question is claimed to be involved, and overrule the action of that Court?"

His answer to this gives the keynote to the decision, thus: "From the date of the passage of the Judiciary Act of 1867 until now, the Supreme Court of the United States while always holding that a United States District or Circuit Court had the power, in extreme cases, to summarily discharge a party from custody who is restrained of his liberty in violation of the Constitution of the United States, yet the same Court has uniformly held that, except in the most extreme cases, the true course for the petitioner was to sue out a writ of error from the Supreme Court of the United States, and thus have the constitutionality of the conviction settled by the only Court in the land whose judgment on constitutional questions is final. This rule was adopted because, although the discretionary power existed, yet it was of more than doubtful propriety for a single United States District or Circuit Judge to interfere with the judicial procedure of a State or Territorial Court when dealing with criminal cases."

He supports this with citations from Federal decisions, and says, "It must be admitted as settled law that this Court, like all subordinate courts, is bound by precedent and peculiarly so where the question involved is one of constitutional law."

Having held that the Court cannot assume jurisdiction for the reasons given, Judge Estee goes on to ask is there a proper Federal question involved in the case. "If there is not," he says, "then there is an additional reason for not assuming jurisdiction because it is settled that a writ of habeas corpus must be denied if it is apparent that the only result of its issue would

be the remanding of the prisoner to custody."

Then the Judge proceeds to give the following important definition of the status of Hawaiian law between the annexation of Hawaii and its erection into a Territory:

"The conditions which existed on these islands when annexed to the United States were unusual. This territory had a civilization peculiar to itself, a government republican in form, with a written constitution, civil and penal statutes, courts of justice with established jurisdiction. It had public schools and other institutions of learning and laws enforcing compulsory education. It was not a mere territory lying in mid-ocean unused, but ready for man's use. It was a free, enlightened state possessing all the attributes of sovereignty, and when with its consent the islands were annexed by the United States, not only the lands but the people with their lands and customs were annexed; and, by the well established law of nations, these laws and customs remained in force until new laws were enacted for the government of the territory. (See, 19 Sutherland on Stat. Construc. Page 19; Black on Constitutional Law, Page 208; American Ins. Co. vs. Canter, 1 Pet. 541; Cross vs. Harrison 16 How. 164-184.)

"These islands although originally a monarchy had become a republic and the people were somewhat versed in the principles of self-government. So much was this so, that Congress waited nearly two years before enacting a law for the government of the territory. In the meantime, no laws were enforced in the territory of Hawaii but the laws of the Republic of Hawaii. The strong arm of the Federal government was not felt here. The former laws and judicial procedure remained and continued in force until the 30th day of April, 1890, when Congress passed the Enabling Act which went into effect on the 14th day of June, 1900. This Act through providing for a different form of government for the new Territory of Hawaii, continued in force many of the former laws of the islands and prescribed especially: 'That all suits at law and in equity, prosecutions and judgments existing prior to the passage of this Act shall continue to be as effectual as if this Act had not been passed.'"

Having formed as already stated that the offense of the petitioner was a misdemeanor and not a felony, Judge Estee points out that Hawaiian law gave jurisdiction over it even to district magistrates without a jury. Still the record showed a jury trial of the case, but with only nine jurors finding defendant guilty. Here again Hawaiian law justified such a conviction.

"One of the amendments of the Enabling Act was to repeal the law authorizing less than unanimous verdicts in criminal cases. But this repealing clause only took effect when the Enabling Act became a law, to wit: June 14, 1900, while this petitioner was convicted May 18, 1900."

"It was held in the case of Maxwell vs. Dow, 176 U. S. 581, that:

"Whether a trial in criminal cases not capital shall be by a jury composed of eight instead of twelve jurors and whether, in case of an infamous crime, a person shall be only liable to be tried after presentment or indictment by a grand jury, are proper to be determined by the citizens of each State for themselves, and do not come within the constitution so long as all persons within the jurisdiction of the State are made liable to be proceeded against by the same kind of procedure, and to have the same kind of trial, and the equal protection of the laws is secured to them."

Proceeding the concluding order before quoted: "The Court finds, that petitioner's remedy is by writ of error from the Supreme Court of the United States:

"That the offense whereof the petitioner was convicted and sentenced was a misdemeanor and not an infamous crime."

"That there was no constitutional right to a presentment or an indictment by a grand jury in this case; and that a verdict of nine out of twelve jurors was authorized by the law of Hawaii, which law in respect to this feature was not repealed until June 14, 1900, and after the trial of this case."

THE PLANTERS ADJOURN

After discussing the labor question in secret session yesterday and reverting to it this morning, also hearing and discussing reports of standing committees on various practical matters, the Hawaiian Planters' Association adjourned sine die at noon. No formal resolution was proposed to give the sense of the meeting on the labor question. The most that resulted on that matter was the elucidation of the efforts to obtain labor from Italy, Porto Rico and the Mainland. An agency is maintained at immigration headquarters in New York to solicit labor among European immigrants. All of the reports will appear in the Planters' Monthly.

The crack of a whip is a narrow aperture, the prettiest bathing suits are always found above the sea level.

Political Doings of Three Parties

Bob Wilcox was taken by the Mauna Loa from Hookena to Maalaea. It seems that he got to the Honouapo landing just as the Mauna Loa was preparing to leave. Captain Simeron refused to lower a boat and Bob was forced to ride all the way to Hookena. He got time to get in some hot shot at one meeting.

The Republican rally at Sims' lawn last night was very largely attended. It was soon after 7 o'clock that a torchlight procession made up of about a hundred Republicans marched from the tramcar stable to the Sims home, a big crowd following. W. R. Sims opened the meeting with a speech and then introduced Julius Kaas as the chairman of the evening. Samuel Parker and T. McCants Stewart were the principal speakers. Both gave rousing speeches.

It comes from the very best of authority that the natives and others who go out to the Democratic luau at Prince David's tonight are to be fed on what will be left over from the Shriners' luau this afternoon. The story of how John Colburn arranged for the purchase of the "shoved over" is quite generally known about the streets today and there is naturally a big kick. The natives generally declare they will not go out to eat "palanho."

The Young Men's Republican Club will hold a meeting at 1912 Wednesday night. On interesting time is promised.

The Republican speakers will hold forth at Kauluwa this evening. Everybody is invited.

A Hilo correspondent writes as follows on the political situation: "Rev. S. L. Desha, the independent Republican candidate for Senator is reported strong in Kona and Kau and he will get the missionary vote in Hilo. Otherwise, his name is Dennis. Loebeinstein is O. K."

At a meeting of the Painters' Union last evening, Clarence Crabbe and Archie Gilliland were endorsed as candidates for the Senate and House of Representatives, respectively.

Remember that the Tuxedo Quartet will sing at the big Republican rally in the drill shed Thursday night. Remember also that Samuel Parker is to be among the speakers.

Prince David will give a big public luau at his home in Waikiki this evening. Free transportation on the tramcars has been arranged for between 6 and 8 o'clock. Everybody is invited.

Judge J. H. Waipulani in a private letter says that the Home Rulers are getting pretty strong support on Maui.

MRS. PARKER MARRIED

San Francisco, Oct. 12.—The marriage of Mrs. Elizabeth Parker, the daughter-in-law of Samuel Parker, the well known capitalist of Honolulu, to Frederick S. Knight, son of George Knight of this city, will take place at 5 p. m. Monday in Trinity church.

Mrs. Parker is the daughter of the late Mr. Dowsett of the Islands. He was one of the wealthiest men in Honolulu, and had large and varied interests. Mr. Dowsett was an Englishman by birth, and went to Honolulu when quite a young man. Mrs. Parker, when she reached the age of 16, was sent to New York, where she was educated. She is a brilliant musician.

Mr. Knight is the second son of George Knight, the well known lawyer. The wedding will be very quiet, only a few of the intimate friends of the bride and groom are to be present. After the ceremony they will go to San Jose and on October 21st will sail on the Alameda for Honolulu, where Mr. Knight will go into business.

SUIT AGAINST DESKY.

The Hawaiian Electric Co., Ltd., has brought suit against C. S. Desky for the payment of \$315.57 alleged to be due the complainant. It is charged that the defendant obtained from the complainant during three years past, an elevator, appliances, etc., which made him a debtor in the sum of \$1,822.57. Of this amount, \$1,407 and all of the discount by way of settlement with Morse, Williams & Co., the people from whom the elevator was purchased, has been paid, leaving the amount mentioned above. The suit is being brought by F. W. Macfarlane, president of the company.

The prettiest bathing suits are always found above the sea level.

Reformers Cause New China Rumors

London, Oct. 13.—The Times has the following from Hongkong, dated yesterday: "The situation in the Wei-Hai-Wei Prefecture is serious. In six districts the cities are in the hands of the rebels. If an outbreak should occur in Canton its suppression would be difficult."

Dr. Morrison, writing to the Times from Peking, under date of October 11, says: "The Chinese officials declare that stringent orders have been sent to provincial officials not to oppose the advance of the allied column."

Hongkong, Oct. 12.—The reformer, Sun Yat Sen, according to dispatches from Canton, has unfurled the reform flag in the important town of Wei-chow, on East River. This act has given rise to considerable excitement in military circles in Canton, as it is believed the object of the reformers in raising their flag at Wei-chow is to denude Canton of troops, so that they can seize the city.

Spreckels to Carry New Zealand Mail

Wellington, N. Z., Oct. 12.—The House of Representatives today approved the Postmaster General's agreement with Messrs. Spreckels to continue for a year the San Francisco mail service.

The vessels will run every three weeks, instead of monthly, beginning November 1. The time from San Francisco to Auckland must not exceed sixteen days.

An amendment favoring Vancouver service was carried without a division.

WISCONSIN A FLYER

Washington, Oct. 12.—The official report of the trial trip of the battleship Wisconsin off Southern California is contained in the following brief telegram received by Secretary Long from Admiral Kautz, commanding the Pacific Station at Santa Barbara:

"Wisconsin completed satisfactory official trip, making 17,261 knots, subject to tidal corrections."

U. S. A. T. WYFIELD.

The U. S. A. T. Wyfield, Cartmar commander, arrived in port this forenoon and hauled alongside Sorenson's wharf, ten days from San Francisco. She sailed on the 13th inst. and therefore brought two days' later news.

The Wyfield has about 300 tons of stores and provisions for the army in Manila as well as 135 head of mules. The transport will remain here several days in order to give the live stock a chance to recover from the effects of the voyage. It can be said to the credit of the transport that not a mule was lost on the trip and there has been absolutely no sickness. The stock is being taken off the ship today.

The quartermaster in charge of the transport is a young man, J. J. Griffin by name, to whom the Bulletin is much indebted for late news favors. The veterinary surgeon is Dr. Hill who is assisted by Chas. E. Hunt of Minneapolis, Minn., a man experienced in the art of handling live stock. Harry Wilder is the man at the head of twenty-four packers and 14 mules aboard. The crew is made up of Chinese.

All hands report a most pleasant trip with Captain Cartmar, the genial old skipper.

RUSSIA READY FOR WAR.

London, Oct. 12.—The Moscow correspondent of the Standard attaches significance to a speech made by the Russian general in command at Wilna to some troops who had been ordered to China, but were recalled to Odessa on the very eve of sailing. He says that the general in addressing the men made this explanation:

"The Czar decided it was necessary to bring you back to Wilna so you might be ready here to join us against a foe we shall be ordered to meet."

The correspondent adds that the foe hinted at can only be Germany.

Death of Miss Payson.

San Francisco, Oct. 13.—Miss Christine Payson, only daughter of Captain and Mrs. A. H. Payson, granddaughter of Mrs. A. M. Parrott, and niece of Mrs. Joseph A. Donohoe and John Parrott, died suddenly on Thursday evening at the family home in San Mateo. Miss Payson was stricken suddenly after partaking of her dinner.

Men's dress shirts, open front or back, the largest and most complete assortment in town at \$1.00 apiece. L. B. Kerr & Co., Queen street.

The latest styles in shirts and ties are to be found at Iwakami's, Hotel street. Tel. 3361 White.

THE WATERMAN IDEAL FOUNTAIN PEN. All sizes, all shapes. H. F. WICHMAN.

The largest room in the world—the room for improvement.

D. B. SMITH'S LIFE INSURANCE MONEY

Contention Over \$25,000
Between New York
and Hawaii.

DR. NOBLITT'S REDRESS
VS. BOARD OF HEALTH

Interesting Report on Judge Widemann's Estate—The Brown Minors' Patrimony—Adoption with Inheritance Rights.

The Equitable Life Assurance Society of New York by its attorney, Paul Neumann, files an amended answer to the complaint of Cecil Brown, administrator of the estate of David Bowers Smith, deceased. It says no demand has been made for the payment of the loss under the policy, which is payable at the office of the defendant in New York City. Further, the Surrogate of the County of New York on July 2 granted letters of administration on the estate to Olivia A. Brown and George H. Brown of Statesville, North Carolina, the former claiming to be the aunt of deceased. On July 23 these administrators began their action in the Circuit Court of the United States of the Southern District of New York, demanding judgment against this defendant for \$25,000 upon the policy of insurance upon which this action of the Hawaiian administration is brought. The Equitable claims that the money being in New York it is answerable to pay it to the New York administrators and not to this plaintiff.

Judge Humphreys has dismissed the petition of W. S. Noblitt for a writ of mandamus to Theo. F. Lansing, Treasurer of the Territory of Hawaii, to compel him to issue to petitioner a license to practice medicine. He holds that the petitioner should take action against the Board of Health to secure his claimed rights. License has always been issued on the recommendation of that body. F. J. Berry for petitioner; E. P. Dole, Attorney General, and Lloyd M. Robbins, Assistant Attorney General, for the respondent.

Regarding the petition for payment of a San Francisco claim against the estate of John Phillips, deceased, the case is continued by stipulation until moved on.

Judge Humphreys by decree confirms the adoption with rights of inheritance of Helen Mabel Kuuleiponui, 16 months of age and daughter of Mary Ann Hutchison, by Helen K. Kahookano, widow.

George D. Gear has filed a master's report on the accounts of Henry R. Macfarlane, Frederick W. Macfarlane, and John M. Dowsett, trustees of the estate of H. A. Widemann, deceased. It finds cash on hand of \$11,349.83 and recommends that, together with remaining property, should be distributed among the heirs as soon as it can be judicially determined who they are. "The determination by the Court," the master says, "seems to be necessary in order to discharge the trustees from liability, for I understand there was one son, Otto, who has not been heard from for about thirty years but who is not known to be dead."

The report contains the following interesting paragraphs:

"Of the real estate only the land described in Royal Patent No. 4040 has been disposed of and that has been done under the following circumstances. The heirs have all agreed that this property was held by decedent as trustee for Carl Widemann, and they have all in writing requested the trustees to convey the same to the Widemanns for the sum of \$150,000 in partial satisfaction of the debt due it from Carl Widemann, and they further authorize and request the directors to pay the balance of \$2545.45 due the Widemann Company from said lease and charge the same to their account in equal shares. This has been done and each heir has been charged with \$280.60 on account of his share of the residuary estate. This will allow the trustees, if they should see fit, to pay over to Carl Widemann the legacy of \$15,000 left in trust for his benefit.

"The heirs have also done another gracious act in permitting the trustees to charge to each of them the sum of \$297.70 on account of each one's share in the residuary estate for the purpose of paying off the debts due by their mother's estate in order to render effective the legacies and bequests provided for by the will."

Irene H. Brown, guardian, files an inventory of the estate of Francis Hyde H. Brown, minor, showing 499 shares in John H. Estate, Ltd., valued at par as \$49,900, and of the estate of George H. Brown, minor, showing \$49,900 H. stock likewise, besides a \$1000 Govern-

ment bond and 70 head of cattle valued at \$1400.

James Auld petitions that Geo. R. Carter be appointed administrator of the estate of his deceased wife, Catherine P. Auld, which is valued at \$1100, of which \$800 represents land on Mokolai and Maui.

Ed. Hoffschlaeger & Co. are suing G. C. Akina and others composing the Look Shin Tong Society for a balance of \$481.56 on account of the erection of a building at Kohala by L. Aenu, who assigned the debt to plaintiffs.

M. Dollinger has been appointed temporary administrator of the estate of Benjamin Steigmann, the wife murderer and suicide, on the petition of the woman before her death, under a bond of \$500.

COL. HEUER'S WORK HERE

Lieut. Col. W. H. Heuer of San Francisco is one of the Shriners now visiting in Honolulu. This gentleman is in charge of the rivers and harbors of the northern part of California to which district Hawaii belongs. Seen by a Bulletin reporter aboard the Zealandia this morning, Col. Heuer had the following to say:

"I am here for the purpose of looking into the Pearl Harbor matter. As you know, the Navy Department has recommended the cleaning out of the entrance to the harbor. Certain plans were presented and Congress appropriated \$700,000."

"What I am to do is to go down to the place, examine the bar that is to be got out of the way. The General plan is to have the channel 30 feet deep and 200 wide. I will go down in the Navy station launch tomorrow morning and spend five or six hours looking over the place preparatory to handing in my report."

More Habeas Corpus.

Ching Ahoo is making a fight against Collector E. R. Stackable's refusal of permission for him to land in this Territory. Kinney, Ballou & McClanahan have sued out a writ of habeas corpus on his behalf, which is returnable before Judge Estee at 10 a. m. tomorrow. The petitioner was born in China but lived in these islands from 1880 till 1899. In the latter year he went home under a return permit. At the expiration of the time limit he fell ill, and had the permit extended as the statute allows. So he claims. If the Court do not see his right to land, he will be deported in the American Maru tomorrow.

Mauna Loa's Report.

The Mauna Loa arrived in port at an early hour this morning. Purser Simeron reports as follows: 4280 bags of sugar at H. A. Co. "Diamond" cleaned out. There were 820 bags of sugar at Kukuihaele and 3000 at Honokaa. It was very windy at Kau and there was a heavy swell on. Plenty of rain in that district, 2 1/2 inches being reported. The Eclipse and Upolu were both at Kailua when we left.

Reception at Capitol.

Governor Dole's reception to the visiting Shriners at the Capitol this morning brought out a large attendance of resident lady relatives of Masons. The band played an inspiring program.

Thomas Black leaves in the Kinau, after paying a visit to his wife and children in town, to transfer his services as engineer from Ooakala to Kohala plantation mill. His Honolulu friends were glad to get a glimpse of "Tom."

Kerr & Co. have values in men's and boy's clothing that cannot be duplicated. They are making a specialty just now of boy's tweed pants at 25 cents per pair.

There will be a dance at the Hawaiian Hotel tonight in honor of the visiting Shriners.

Many a train of thought should participate in a head end collision.

Heavy Sole Shoes

FOR MUDDY STREETS.

The Doctor's Advice

is to keep your feet dry and prevent illness.

This is what OUR HEAVY SOLE—

BOX CALF IN TAN
and
BOX CALF IN BLACK

—will do—

\$4.50 Per Pair.

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McLELLAN POND & CO.
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Residence Sites on—

Prospect Street,
Punchbowl Slope.

are scarce, and held at
increasingly high prices.

WE offer a very choice corner with cottage, commanding the—

Ocean View from the
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